

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**





To Be Argued by BENNETT M. EPSTEIN

**76-1588**

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Docket No. 761588

UNITED STATES OF AMERICA,

-against-

WILLIAM R. GALLAGHER,

Appellant.

On Appeal from the United States District  
Court for the Eastern District of New York

BRIEF AND APPENDIX FOR THE APPELLANT

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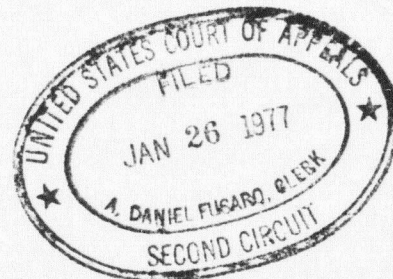


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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
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UNITED STATES OF AMERICA,

-against-

WILLIAM R. GALLAGHER,

Appellant.  
-----

PRELIMINARY STATEMENT

Appellant, WILLIAM GALLAGHER, appeals for a judgment of the United States District Court for the Eastern District of New York (Hon. Edward R. Neaher, United States District Judge) entered on December 3, 1976, convicting him upon his plea of guilty to one count possessing property stolen from interstate shipment (Title 18 United States Code, Section 659) and sentencing him to a term of two years imprisonment (the defendant to serve the first six months with the balance of eighteen months suspended).

The appellant's guilty plea followed the denial of his motion to suppress physical evidence after a hearing was held before Neaher, J. on June 10, 1976. It was stipulated between the government and the defense with the approval of the court below that appellant would be permitted to take this appeal from the denial of suppression and remain free on bail pending appeal.



### STATEMENT OF FACTS

On January 28, 1976, at approximately 1:30 P.M. Special Agent John E. Westhoff of the F.B.I. obtained a search warrant for premises described as "the first floor left" of 1576 East 93th Street, a premises which was further described as "a 4 family, two-story dwelling with red brick veneer and two (2) underground garages" (Warrant, A-1 Westhoff 15; A-5)\*.

Westhoff took the warrant, which specified a daytime search and upon which the night service clause had been stricken by the Magistrate, to the premises. Arriving there at approximately 3:00 P.M., he knocked on the front door and rang the bell. Receiving no response, he joined other agents already present in a continuing surveillance of the premises. (Id. 15-16; A-5-6).

At approximately 11:15 P.M., appellant, William Gallagher, entered the premises. Fifteen minutes later, Westhoff rang a bell and Gallagher came to one of the upstairs windows and looked out. Westhoff identified himself and said he had a warrant. Gallagher came downstairs and opened the front door. The agents went upstairs to the first floor apartment and began to search it. (Id. 16-18; A 6-8).

\*References prefixed "A" are to Appellant's Appendix. References bearing witness' names refer to testimony at Suppression Hearing.

The first floor apartment was a complete apartment residential unit occupied by the Gallagher family. Westhoff and his fellow officers (another F.B.I. agent and two Port Authority Police Officers) searched in every room of the house, including the children's bedrooms, kitchen and bathroom. They opened up drawers, closets, kitchen cabinets and the refrigerator. When the agents did not find what they were looking for in the Gallagher's first floor apartment, they asked Mr. Gallagher for the key to the downstairs ground floor apartment, which he stated he did not have. They thereupon took Mr. Gallagher downstairs with them and demanded the key. Gallagher again stated he did not have a key, and the agents thereupon proceeded to break down the door to that apartment. Inside, in the bathroom and kitchen, the agents found the stolen "Russ Togs" women's wear which is the subject matter of the instant indictment. (Id. 45-57,64 ; A- 9-22 ).

Westhoff then made a telephone call and about an hour later additional agents arrived to continue the search and remove the items. (Id. 67-69 A- 23-25).

#### THE DECISION OF THE HEARING COURT

At the conclusion of the hearing, Judge Neaher denied the motion to suppress. His opinion, which was read into the record at the close of the hearing, is reproduced at pp. A- 26-28 of Appellant's Appendix.



POINT ONE

THE EXECUTION OF THE SEARCH  
WARRANT AT 11:30 P.M. IN VIO-  
LATION OF ITS DAYTIME-ONLY  
AUTHORIZATION REQUIRES  
SUPPRESSION.

There is no factual dispute in the instant case that the govern-  
ment agents knowingly and deliberately executed a daytime-only search  
warrant at 11:30 P.M. (A - 29 ).

A general search warrant governed by Rule 41 of the  
Federal Rules of Criminal Procedure cannot be executed after 10:00 P.M.  
without a specific authorization to do so contained in the warrant and a  
special showing in the supporting affidavits justifying a "nighttime" search.

Rule 41 (c) provides that a search warrant

"\*\*\*shall be served in the daytime, unless the  
issuing authority, by appropriate provision in the  
warrant, and for reasonable cause shown, authorizes  
its execution at times other than daytime. \*\*\*"

Rule 41 (h) defines "daytime" as "the hours from 6:00 A.M.  
to 10:00 P.M. according to local time."

The foregoing provisions appear in the rule as the result  
of a 1972 amendment. Prior to 1972, Rule 41 (c) contained no definition  
of "daytime", while it provided

"\*\*\*The warrant shall direct that it be served in  
the daytime, but if the affidavits are positive that the  
property is on the person or in the place to be searched,



"the warrant may direct that it be served at any time. \*\*\*\*"

The Notes of the Advisory Committee on Rules explain the amendment thusly:

"The rule is also changed to allow the magistrate to authorize a search at a time other than 'daytime', where there is 'reasonable cause shown' for doing so. To make clear what 'daytime' means, the term is defined in subdivision (h)."

In Gooding v. United States, 416 U.S. 430 (1974), the Court compared 21 U.S.C. 879 (a)<sup>1</sup>, which governs search warrants in narcotics cases, to the amended Rule 41 (c) and concluded that narcotics warrants do not require a special showing for the necessity of a nighttime search while the clear intent of Rule 41 (c) is to require such a showing. Said the Court, (at p. 456):

"Federal Rule Crim Proc 41, as amended in 1972, states: 'The warrant shall be served in the daytime unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime.' (Emphasis added.) The

---

1. This subsection provides as follows:

"A search warrant relating to offenses involving controlled substances may be served at any time of the day or night if the judge or United States magistrate issuing the warrant is satisfied that there is probable cause to believe that grounds exist for the warrant and for its service at such time."

"fact that Congress, when it has intended to require such special showing for nighttime searches, has done so in language largely free from ambiguity militates against petitioner's assertion that the language of [21 U.S.C.] §879 (a) on its face supports his position." [Emphasis in original.]

Both the majority and the three dissenting Justices in Gooding recognized the additional invasion of privacy that a nighttime search represents. This recognition was expounded upon by the dissenters, per Douglas, J., who would have also interpreted the narcotics search statute to require a special showing for nighttime searches similar to that which all of the Justices agreed is required by Rule 41 (c):

" This Court has consistently recognized that the intrusion upon privacy engendered by a search of a residence at night is of an order of magnitude greater than that produced by an ordinary search. Mr. Justice Harlan observed in holding a nighttime search unconstitutional in *Jones v. United States*, 357 U.S. 493, 498 (1958): [I]t is difficult to imagine a more severe invasion of privacy than the nighttime intrusion into a private home. ' In *Collidge v. New Hampshire*, 403 U.S. 443, 477 (1971), the Court again recognized that a midnight entry



into a home was an 'extremely serious intrusion.' And our decision in *Griswold v. Connecticut*, 381 U. S. 497 (1965), was in large part based upon our revulsion at the thought of nighttime searches of the marital bedroom to discover evidence of illegal contraceptive use. See *id.*, at 485-486.

"It is small wonder, then, that Congress has consistently required more stringent justification for nighttime searches than that needed to authorize a search during the day."

(414 U. S. at p. 463).

This Court expressed its accord with the foregoing view in *United States v. Ravich*, 421, Fed 1196, 1201 (2d Cir. 1970):

" The reason for requiring specific authorization for night searches and for the somewhat higher standard of proof for them imposed by Rule 41 [is] the peculiar abrasiveness of official intrusions at such periods, see *Jones v. United States* [*supra*]."

It is, therefore clear beyond cavil that the framers of the amended Rule 41 (c) intended to permit searches after 10:00 P. M. only with the approbation of the Magistrate and only upon a showing of



the necessity for the greater intrusion of a nighttime search. The officers executing the warrant are simply not given the discretion to execute a search warrant at night of their own initiative.

The warrant in the instant case concededly fails to contain the requisite specific authorization for service after 10:00 P.M. In fact, such authorization on the standard warrant form was affirmatively "x"ed out in this case. This fact alone, we submit, invalidates the instant search in violation of the warrant's provisions.

LAZ-47  
Furthermore, the supporting affidavit<sup>2</sup> fails to contain any showing necessitating the greater intrusion of a nighttime search. There is no showing, for example, that the warrant could not have been executed during the daytime hours, or that the property sought was likely to be removed or destroyed, or that the property sought was not likely to be found in the premises except at night.<sup>2</sup> Nor is it possible to conclude from the supporting affidavit that "the search [was] calculated not only to garner evidence of past crime but also to terminate a serious species of ongoing criminality" such as the packaging of narcotics. See, United States v. Gooding, 477, F. 2d 428, 444 (D.C. Cir. 1973) [Robinson, J., concurring], affd., Gooding v. United States, supra. Nor was there any proof of the foregoing adduced at the hearing.

<sup>2</sup> Such are the criteria codified in the District of Columbia statutes (D.C. Code 23-522 [c] [1]) cited by the Court in Gooding v. United States, supra, 416 U.S. 430, 434 n. 4.



Research has failed to disclose any case in which evidence obtained during a nighttime search in derogation of the new, specific 10:00 P.M. deadline in Rule 41 was sought to be introduced. Numerous cases have, however, arisen under the former rule in which "daytime" warrants were alleged to have been executed at night. While interpretations of what constituted the end of "daytime" have varied from precisely at sunset to the time of actual darkness, nighttime execution of a daytime warrant has consistently resulted in suppression. See Anno., Propriety of Execution of Search Warrant at Nighttime, 26 A.L.R. 3d 951. Also, see e.g. United States ex rel. Boyance v. Meyers, 398 F. 2d 896 (3d Cir. 1968); Pugliese v. United States, 343 f. 2d 837 (1st Cir. 1965); United States v. Gosser, 339 F. 2d 102 (6th Cir. 1964), cert. denied, 382 U.S. 819; United States v. Woodson, 303 F. 2d 49 (6th Cir. 1964) cert. denied, 373 U.S. 941; United States v. Merritt, 293 F. 2d 742 (3d. Cir. 1961).

Counsel is aware of no case in which the nighttime execution of a daytime warrant at occupied premises has been held either harmless or justified. In one case, United States v. Ravich, supra, 421 F. 2d 1196, this Court did hold that the search of two unoccupied motel rooms at night without nighttime authorization in the warrant was harmless under F. R. Cr. P. 52 (a). But in that case the omission of nighttime authorization was held to be inadvertent (See. United States v. Burke, 517, F. 2d 377

386 [2d Cir. 1975]. The defendants had already been arrested and taken from the rooms during the day and the search was for some items which had already been seen by the arresting agents. Also, the Court found that the issuing judge was aware that the warrants would be executed at night and found further that the warrants contained an adequate factual basis for a nighttime search. Moreover, the facts in Ravich occurred in 1968, prior to the amendment to Rule 41 (c) discussed above. To say that the instant case is materially distinguishable from Ravich is an understatement.

It is also impossible for the Government to seriously contend that the service of the warrant an hour and a half later than the 10:00 P. M. limit and the presence of numerous officers executing it until the early morning hours adds up to a "ministerial" defect.

Nevertheless, the Government will contend, as the court below concluded, that the violation of Rule 41 (c) was harmless in the instant case because nobody else in the Gallagher household was at home when the search occurred, and Mr. Gallagher himself had arrived home fifteen minutes earlier and hence nobody was "roused" out of bed. The Government may also contend, as it did in the Court below, that the agents showed "good faith" in not executing the warrant until Mr. Gallagher arrived home.

To the "good faith" argument, we note our doubts that the agents could have properly executed the warrant by breaking and entering the Gallagher apartment inasmuch as they were aware that nobody in the family was



home at the time and were not "refused admittance" (18 U.S.C. §3109) (But, see United States v. Gervato, 474 F. 2d 40 [3rd Cir. 1973]). In any event, the other side of the "good faith" coin is the agents' hope of strengthening the Government's case by finding the defendant in closer proximity to the contraband, or the garnering of admissions or additional physical evidence from the defendant or the avoidance of defenses which could arise from the non-presence of the defendant at the time of the search. Executing the warrant at the time they did also obviated the necessity of maintaining surveillance until the "daytime" hours arrived. Judging from the wily and oft-times evasive testimony of Agent Westhoff at the suppression hearing, we think it fair to conclude that "good faith" was not at the top of his list of priorities in executing the instant warrant.

The argument that the intrusion was minimal because of the lack of other family members present (Mr. Gallagher has a wife and five children residing with him at the premises searched) is merely to state that this search was less abrasive than it could have been had they been home and in their beds when the warrant was executed. But any nighttime search of a home - especially one which lasts into the early morning hours, as was the case here - is still abrasive per se no matter how many family members are home when the search begins and whether they are awake or abed, dressed nor not. To repeat, we are not aware of any case which qualifies the notion of the particular abrasiveness of nighttime searches with considerations of whether the occupants are actually asleep at the



time, and we submit that the requirement of specific justification and authorization for nighttime searches is of constitutional magnitude.

The court below placed primary reliance for its "harmless error" approach on this Court's opinion in United States v. Burke, supra 517 F.2d, 377. This reliance was misplaced. In Burke, appellant contended that the search warrant, issued by a state judge in Connecticut on a Connecticut form (but determined to be a "federal warrant" because it was sought for a particular federal offense by a federal law enforcement officer although together with state officers [517 F. 2d supra, at p. 384]) failed to conform to the requirements of Rule 41 (c) in three respects: 1. the warrant had been directed to "any Police Officer" rather than to a "civil officer of the United States"; 2. the warrant commanded a search "within a reasonable time" rather than "within a specified time not to exceed ten days"; 3. the warrant was made returnable before the issuing judge rather than a federal magistrate.

This Court, in holding that these violations of Rule 41 were not of sufficient consequence to justify suppression, cited the provisions of the American Law Institute's Model Code of Pre-Arrest Procedure and noted that like defects were not grounds for suppression under the Model Code (577 F. 2d supra at p. 386). In a footnote to this Court's opinion, however, it indicated that an "important exception" to the Model



Code's" harmless error" scheme was "execution of the warrant at a time not authorized therein or at nighttime" (emphasis added) (517 F. 2d, supra, at p. 386 n. 11).

In addition to this most significant footnote, this Court went on to state that "violations of Rule 41 alone should not lead to exclusion unless 1. there was 'prejudice' in the sense that the search might not have occurred or would not have been so abrasive if the Rule had been followed, or 2. that there is evidence of intentional and deliberate disregard of a provision in the Rule" [footnotes omitted] (517 F. 2d, supra, at p. 386-7). It is clear in the instant case that the nighttime search was intentionally and deliberately in violation of the provisions of the Rule and of the specific provisions of the warrant, and that it was more abrasive than had it been carried out in the daytime.

We submit that there has been a knowing and clear cut violation of an important provision of law which cannot be overlooked without seriously devaluating the efficacy of the Rules, and suppression is required.

POINT TWO

THE EXECUTION OF THE SEARCH  
WARRANT AT A DIFFERENT PLACE  
THAN THAT DESCRIBED IN THE  
WARRANT REQUIRES SUPPRESSION.

The Fourth Amendment requires that a warrant "particularly describe the place to be searched and the person or things to be seized." It is elementary that this clause is intended to guard against general searches by curtailing the discretion of the executing officer and restricting the ambit of the search to the particular place approved by the magistrate. Stanford v. Texas, 379 U.S. 476 (1965); Marron v. United States, 275 U.S. 192 (1927); United States v. Dzialak, 441 F. 2d 212 (2d Cir. 1971).

The instant warrant is directed at the "first floor left" apartment, which, the supporting affidavit avers, is the defendant's residence. As the testimony at the hearing established, the contraband in this case was discovered in a separate apartment one floor below the apartment described in the warrant. This additional search took place after the executing officers had thoroughly searched defendant's residence without finding the items specified in the warrant. This, we submit, is precisely the sort of discretion by the executing officer which the Fourth Amendment seeks to curtail.

A search warrant for a multiple dwelling which fails to specify the unit to be searched is invalid. United States v. Hinton, 219 F. 2d



324 (7th Cir. 1955); Tynan v. United States, 297 F. 177 (9th Cir. 1924);  
United States v. Mitchell, 274 F. 128 (D. Cal. 1921); People v. Rainey,  
14 N. Y. 2d 35, 248 N. Y. Supp. 2d 33 (1964).

A fortiori, a warrant which specifies the wrong unit is also  
invalid.

#### CONCLUSION

THE MOTION TO SUPPRESS SHOULD  
HAVE BEEN GRANTED AND THE  
CONVICTION SHOULD HAVE BEEN  
REVERSED.

Respectfully submitted

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APPENDIX TO BRIEF

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ED:GNS:ms  
P. 761,110

United States District Court  
FOR THE

EASTERN DISTRICT OF NEW YORK

Search Warrant

62-77700  
76 1135

UNITED STATES OF AMERICA

Docket No.

Case No.

vs.

Premises known as 1576 East  
98th Street, Brooklyn, New  
York, the 1st floor left of  
a 4 family, two-story dwell-  
ing with red brick veneer and  
two (2) underground garages,

SEARCH WARRANT

To ANY SPECIAL AGENT OF THE FEDERAL BUREAU OF INVESTIGATION:

Affidavit(s) having been made before me by MICHAEL R. RIGOLIZZO, Special  
Agent of the Federal Bureau of Investigation

that he has reason to believe that ~~XXXXXX PERSON~~ { on the premises known as } 1576 East 98th Street,  
Brooklyn, New York, the 1st floor left of a 4 family, two-story  
dwelling with red brick veneer and two (2) underground garages,

in the Eastern District of New York

there is now being concealed certain property, namely an unknown quantity of merchan-  
dise which was stolen while moving as and constituting part of foreign <sup>here describe property</sup>  
and interstate shipments of freight, including but not limiting to  
various types of wearing apparel and jewelry in violation of Title  
18, United States Code Section 659.

and as I am satisfied that there is probable cause to believe that the property so described is being  
concealed on the person or premises above described and that grounds for application for issuance of the  
search warrant exist as stated in the supporting affidavit(s).

You are hereby commanded to search within a period of \_\_\_\_\_  
(not to exceed 10 days) the person or place named for the property specified, serving this warrant  
and making the search { in the daytime (6:00 a.m. to 10:00 p.m.) } and if the property be found  
there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written  
inventory of the property seized and promptly return this warrant and bring the property before  
\_\_\_\_\_ as required by law.

Federal judge or magistrate

Dated this 28th day of January, 19 76

\_\_\_\_\_  
VAC

Judge (Federal or State Court of Record) or Federal Magistrate.

\*The Federal Rules of Criminal Procedure provide: "The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision  
in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime" (Rule 41(c)). A statement of grounds for rea-  
sonable cause should be made in the affidavit(s) if a search is to be authorized "at any time day or night" pursuant to Rule 41(c).



----- X  
UNITED STATES OF AMERICA, :

AFFIDAVIT

- against - :

PREMISES KNOWN AS 1576 East 98th :  
Street, Brooklyn, New York, the :  
1st floor left of a four-family, :  
two-story dwelling with red brick :  
vener and two (2) underground :  
garages, :

Cr. No. \_\_\_\_\_

T.18, \$659

Defendant. :

----- X  
MICHAEL R. RIGOLIZZO, being duly sworn deposes and  
says:

That he is a Special Agent of the Federal Bureau of  
Investigation duly appointed according to law and acting as  
such.

Your deponent has reason to believe that within the  
premises known as 1576 East 98th Street, Brooklyn, New York,  
the 1st floor left of a four-family, two-story dwelling with  
red brick veneer and two (2) underground garages, there is now  
being concealed an unknown quantity of merchandise which was  
stolen while moving as and constituting part of foreign and  
interstate shipments of freight, including but not limiting to  
various types of wearing apparel and jewelry in violation of  
Title 18, United States Code Section 659.

The source of your deponent's information and the  
grounds for his belief are:

1) Information supplied by an anonymous source who  
has previously given reliable information which has led to two  
(2) arrests and the seizure of approximately \$4,000.00 worth  
of goods stolen from interstate commerce, that:

A. The above-described premises is presently  
being used to conceal and house merchandise stolen  
from interstate commerce;

B. That on January 28, 1976 between the  
hours of 2:00 A.M. and 4:00 A.M. one KENNETH  
STALONE would be delivering a parcel of merchandise  
stolen from interstate commerce to the above-  
described address; and

A-2.



C. That KENNETH STALONE would be driving a red or orange Volkswagen bearing New York State license plate number 602YPP.

2) Observations made by your deponent and other Special Agents of the Federal Bureau of Investigation that:

A. On January 28, 1976, KENNETH STALONE was driving a red Volkswagen bearing New York State license plate number 602YPP.

B. That KENNETH STALONE did in fact drive to the above-described address at approximately 3:00 A.M. on January 28, 1976; and

C. That KENNETH STALONE was carrying a parcel with all outer labels ripped off, but which contained a shipping document inside bearing the name Ups N Downs Inc.

3) Investigation by your deponent concerning the above-described shipping document which revealed that the afore-mentioned parcel which had been in the possession of KENNETH STALONE had been stolen while moving in and constituting an interstate shipment of freight from New York, to Atlanta, Georgia.

4) An oral statement made to your deponent by KENNETH STALONE that on January 28, 1976 he knew that the parcel he had been carrying had been stolen and that he was delivering this parcel to one William Gallagher (Ph) who resides at the premises known as 1576 East 98th Street, Brooklyn, New York, the 1st floor left of a four-family, two-story dwelling with red brick veneer and two (2) underground garages.

5) A further oral statement made to your deponent by KENNETH STALONE that within the past year he delivered merchandise stolen from various shipments of freight in and around LaGuardia Airport, Queens, New York to William Gallagher at the premises known as 1576 East 98th Street, Brooklyn, New York.

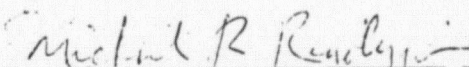


6) Investigation by your deponent that a motor vehicle check of a Volkswagen, New York State license number 702KBT parked in front of the above-described premises is registered to one William Gallagher at 1576 East 98th Street, Brooklyn, New York.

7) An oral statement made to Special Agent Terry Bohnemeier by William Gallagher that he did in fact reside at the premises known as 1576 East 98th Street, Brooklyn, New York, the first floor left of a four-family, two-story dwelling with red brick veneer and two (2) underground garages.

WHEREFORE, your deponent respectfully requests that a Search Warrant be issued authorizing your deponent and Special Agents of the Federal Bureau of Investigation to search the premises known as 1576 East 98th Street, Brooklyn, New York, the first floor left of a four-family, two-story dwelling with red brick veneer and two (2) underground garages, and to seize the above-described unknown quantity of merchandise which was stolen while moving as and constituting part of foreign and interstate shipments of freight.

Dated: Brooklyn, New York  
January 28, 1976

  
MICHAEL R. RIGOLIZZO, Special Agent  
Federal Bureau of Investigation

Sworn to before me this  
28th day of January, 1976

---

THE COURT: Mark it in evidence.

THE CLERK: Government's Exhibit 1 received in evidence.

(So marked in evidence.)

Q Do you recall, Agent, the approximate time that you obtained this search warrant in the Courthouse?

A In the early afternoon. 1:30, 2:00 o'clock.

Q From there, where did you go?

A I proceeded to the premises at 98th Street.

Q Were there other agents and other police officers there at that time?

A Yes.

Q What did you do when you arrived at the premises?

A I went to the door and knocked on the door of the premises.

MR. EPSTEIN: Can we get the time he arrived there?

Q Do you recall what time it was that you arrived at the premises?

A It was about 3:00 o'clock in the afternoon.

Q Again, what did you do when you arrived?

A Knocked on the door, rang the bell, and tried to get somebody to answer the door.

Q Did anyone respond?



1

2

A No.

3

Q Thereafter, did you remain at the residence?

4

A Yes.

5

Q Did there come a time when y did in fact

6

execute the search warrant?

7

A Yes.

8

Q Approximately what time was this?

9

A About 11:30 that night.

10

Q Prior to that, did you observe anyone enter those

11

premises?

12

A Yes.

13

Q Approximately what time was that?

14

A About 11:15.

15

Q Who entered the premises?

16

A Mr. Gallagher.

17

Q Are you able to identify him?

18

A Yes.

19

Q Point him out, please?

20

A Sitting next to counsel at the table (indicating).

21

MR. EPSTEIN: Conceded.

22

Q At approximately 11:30, could you tell us

23

exactly what you did when you approached the premises?

24

A I rang the bell and Mr. Gallagher looked out the

25

window.

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Q What window was this?

A Directly above the door.

Q A floor above?

A Yes. I identified myself and he came downstairs.

Q Did you indicate to him you had a search  
warrant?

A Yes.

Q Did he come downstairs and open the door?

A Yes.

Q Where did you go then?

A Upstairs.

Q Can you describe the area you immediately entered  
after Mr. Gallagher opened the door?

A It was like a foyer with stairs going upstairs.

Q You proceeded up a flight of stairs?

A Yes.

Q One flight?

A That's right.

Q What did you do then?

A Well, we all went in the living room and I  
identified myself to Mr. Gallagher and I said we have a search  
warrant.

And I let him read it. He read the search  
warrant and then I advised him of his rights. And he offered



1  
2 no objection.

3 Q What did you and your fellow agents do at that  
4 time?

5 A We took a general look around the area, the  
6 upstairs area. Then accompanied by Mr. Gallagher we went  
7 downstairs.

8 Q Well, in this look around the area upstairs,  
9 did you perform a thorough search at that time?

10 A No.

11 Q What were you looking for?

12 A Stolen merchandise, big boxes, hanging garments.

13 Q This first look around the apartment did you  
14 find such items?

15 A No.

16 Q What did you do?

17 A Looked for a place items such as this would be  
18 stored.

19 Q Where did you go?

20 A I went downstairs with Mr. Gallagher.

21 Q Where did you go when you went downstairs?

22 A Well, behind the stairs was a door. And I asked  
23 Mr. Gallagher if he had a key for that door.

24 Q What was his response?

25 A He said no.

1  
2 is that correct?

3 A That is correct.

4 Q Seconds after he looked out the window and you  
5 told him you had a warrant?

6 A Right.

7 Q He opened the door?

8 A Right.

9 Q Did you say anything to him?

10 A I identified myself to him.

11 Q Did the other officers identify themselves?

12 A Yes.

13 Q Did he say anything to you?

14 A He said come upstairs.

15 Q You went upstairs with him, is that correct?

16 A That's right.

17 Q What you saw there was an apartment, is that  
18 correct?

19 A Right.

20 Q With a kitchen?

21 A Kitchen, with a living room, bedroom.

22 Q Bedrooms?

23 A Yes.

24 Q His own bedroom?

25 A I don't know whose it was.



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Q Can you tell an adult bedroom from a child?

A Depending on the age of the child.

Q Do you think as an agent for 15 years you can tell an adult's bedroom from a teenager's bedroom?

MR. WOODFIELD: I object, your Honor.

THE COURT: I will allow it.

A I am sure I should be able to.

Q I would hope so. So that when you went through the house you can see there was an adult bedroom there?

A Yes.

Q You could also see there were children's bedrooms there?

A Right.

Q A bathroom there?

A Yes. I believe so.

Q With regular plumbing?

A I don't specifically recall the bathroom. I am sure there was one there though.

Q A kitchen?

A There was a kitchen, yes.

Q A full and complete apartment, is that correct?

A Oh yes.

Q I believe you testified that you started to take a look around, is that correct?

- 1  
2 A Yes.  
3 Q Did you look in all the bedrooms?  
4 A Yes.  
5 Q You looked in each and every bedroom?  
6 A Somebody did. There were four of us. We took  
7 a look around.  
8 Q You looked in each and every room of the house,  
9 is that correct?  
10 A Yes.  
11 Q What room did you look in?  
12 A I believe I just looked around the kitchen and  
13 the living room.  
14 Q Did you open up drawers?  
15 A Probably did, I don't recall.  
16 Q Probably opened up closets?  
17 A A cursory look around.  
18 Q Probably opened up kitchen cabinets too?  
19 A Probably.  
20 Q Did you open up the refrigerator?  
21 A I'm sure I did.  
22 Q Did you look under the furniture?  
23 A Probably.  
24 Q Did you look behind the furniture?  
25 A We didn't move anything at that time.



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Q But during this cursory look around you opened closets and you looked under pieces of furniture?

A If easily accessible.

Q You looked in every room of the house during this cursory look around?

A Yes.

Q I believe you testified that you didn't find what you were looking for, is that correct?

A That's right.

Q Your information had it there were garments present, is that correct?

A I was looking for stolen merchandise which would have been hanging garments or large cartons, things of that nature.

Q Wait a minute now agent, stolen merchandise could be a pair of water skis too, is that correct?

A I wasn't looking for water skis.

Q You were looking for garments, is that your testimony?

A One of the things I was looking for was garments.

Q Large hanging garments, I believe you testified to?

A Yes.

Q Were there any large hanging garments in the

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closet?

A Upstairs?

Q That is right.

A No.

Q Was there any clothing in the closet?

A Yes, I recall clothing.

Q You looked at that clothing, is that correct?

A Yes.

Q Did you look between it, did you move the clothing from side to side in the closet?

- A Probably.

Q Did you look in the pockets of the clothing?

A No.

Q You were looking to see whether or not that clothing was stolen in the closet?

A Right.

Q But yet you did not find what you were looking for, is that correct?

A That's right.

Q Now, I believe you testified when you came in you advised Mr. Gallagher of his rights?

A Yes.

Q You showed him a copy of the search warrant, is that correct?



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A Right.

Q What exactly did you say to Mr. Gallagher?

A I said I am a special agent of the FBI. I have a search warrant for the premises here.

He sat down. He read the search warrant. I asked him if he understood it and he indicated yes.

I read his rights and then we started --

Q When you say you read his rights, what do you mean?

MR. WOODFIELD: I object. I don't see the relevancy in this proceeding.

THE COURT: It might have some relevance.

A I had a card entitled "Your rights." It enumerates all the rights that a defendant has. The right to remain silent, the right to have an attorney, the right not to make any statements, anything he says could be used against him in Court. If he couldn't afford an attorney one would be appointed to him by the Court. If he started answering questions he could stop answering at any time.

Q In other words, you read him what was on a card which is United States Government printing issued to you for such purposes, is that correct?

A Yes.

Q Did Mr. Gallagher say anything to you in response

1  
2 to when you read those rights to him?

3 A No.

4 Q Did he say anything in response when you showed  
5 him the search warrant?

6 A Not to my knowledge.

7 Q Did he indicate to you he was not going to resist  
8 the mandate of the Court?

9 A That is correct.

10 Q As a matter of fact, at no time did Mr. Gallagher  
11 indicate to you in any way that he was going to resist a  
12 mandate of the Court?

13 A Physically resist?

14 Q Yes.

15 A No, he did not indicate that.

16 Q Would you characterize his demeanor as  
17 reasonably cooperative?

18 A No, I couldn't say that.

19 Q Why couldn't you say that?

20 A Because I wanted a key for a downstairs door  
21 and he wouldn't give it to me.

22 Q Do you know whether or not he had a key for the  
23 downstairs --

24 A I assumed he did.

25 Q But you didn't know whether or not he had it?



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Did he refuse to give you the key?

A He said he didn't have one.

Q He didn't say "I have one but you can't have it"  
correct?

A He didn't say that.

Q You assumed he had it?

A Yes, I did.

Q Did Mr. Gallagher have a key ring?

A Did he have a key ring?

Q Yes.

A I think so.

Q How do you know that?

A I believe he opened the door upstairs. I believe  
his boy's bedroom door, to the best of my recollection, it  
may have been locked and he might have opened that.

Q He opened that with a key from the key ring?

A I think so, counselor, I am not sure.

Q So when you testified just a moment ago that  
Mr. Gallagher was uncooperative and that he refused to open  
the ground floor door, you really didn't mean that, did you?

A Yes, I did.

MR. WOODFIELD: I object. He asked the question  
and the witness gave an answer.

Q Do you really mean he refused to open the door?

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A That's what it meant to me.

Q Because he told you he didn't have the key?

A Right.

Q Is that the only way in which Mr. Gallagher was uncooperative?

A He didn't give us any statement.

Q But other than the fact that he didn't have the key to the downstairs door, and other than the fact that he didn't give you a statement, would you characterize his demeanor as reasonably cooperative?

A He didn't obstruct us in any way. I might have a different definition of cooperation than you do.

Q I am sure you do, Agent Westhoff.

Other than the fact Mr. Gallagher didn't have a key to the downstairs premises, did he refuse you entry to anyplace in his apartment?

A No.

Q As a matter of fact, he even opened the boy's room, is that correct?

A Yes.

Q He did so upon request?

A Yes.

Q With a key from his key ring?

A I think so, I am not sure.



1  
2 Q There came a time when you arrived at the  
3 downstairs door that you asked him for the key to the downstairs  
4 door?

5 A Yes.

6 Q What was his exact response?

7 A I couldn't give you that because he was mumbling  
8 at the time and I couldn't get a response. I kept asking for  
9 the key and explaining if he didn't give us the key the door  
10 would have to be broken down.

11 Q At that time, you were with the other agents,  
12 is that correct?

13 A Yes.

14 Q There were two of you?

15 A Four of us.

16 Q Four of you?

17 A Yes, two agents and two Port Authority police  
18 officers.

19 Q Four individuals who I believe you would agree  
20 were capable of breaking down the door and in fact did break  
21 down the door when called upon to do so, is that correct?

22 A That is correct.

23 Q Four healthy American law enforcement officers?

24 A I don't know how healthy.

25 Q Could you tell us exactly what Mr. Gallagher

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Q Not impossible?

A That's right.

Q But you didn't have any recollection of that occurring?

A I don't specifically recall that, no.

Q Who were the other agents outside the door?

A Only one other agent, Agent Jules.

Q Either Agent Jules or yourself could have tried certain keys in the door to that apartment?

A Or the two police officers that were there.

Q There were two police officers there too?

A That's right.

Q It could have been one of them who tried certain keys in the door to that apartment?

A If in fact that was done, that is correct.

Q You are not saying that was done?

A That's right.

Q When you went into that apartment, the ground floor apartment, you looked around it, didn't you?

A Which apartment?

Q The ground floor apartment, you looked around?

A Yes.

Q You were looking for contraband, is that correct?

A Right.

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2 Q Did that apartment have windows?

3 A I don't recall. I think it might have had some  
4 rear windows of some type.

5 Q Did that apartment have a bathroom?

6 A Yes.

7 Q Have a kitchen?

8 A Not as such.

9 Q Did it have kitchen appliances?

10 A Yes.

11 Q Was it set up as a kitchen?

12 A I don't know if you can call it that. It was all  
13 in one room. Kitchen appliances and the rest of everything  
14 was just in one room.

15 Q Had you ever been in a studio apartment, Agent?

16 A Yes.

17 Q Some of those apartments don't have separate  
18 kitchens, is that correct?

19 A Yes.

20 Q But they have kitchen areas?

21 A Yes.

22 Q Isn't that what you would call what you saw in  
23 terms of kitchen appliances in that apartment, a kitchen area?

24 A Absolutely, it was a kitchen area.

25 Q Thank you. There was a table there, correct?



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apartment, is that correct?

A Yes.

Q Which were later determined to be stolen from an interstate shipment, is that correct?

A I don't know.

Q That is why we are here?

A I didn't have the case assigned to me, I don't know what was identified later on.

Q Did you find any Russ Togs upstairs?

MR. WOODFIELD: Excuse me. For the purpose of expediting this hearing, I am willing to concede that the counts in the indictment are based on items that were later determined to be stolen were found in the lower level.

MR. EPSTEIN: I will accept that. Thank you, Mr. Woodfield.

MR. WOODFIELD: I don't want to give the impression that the three counts in the indictment were the only items determined to be stolen.

Q When you searched this downstairs apartment and looked in the bathroom area of it, you looked in the kitchen area, did you see any crushed labels or cartons?

A I don't recall.

Q It was just about everything you recovered in that

1  
2 chandise.

3 Q You drew that conclusion based on the fact that  
4 items were strewn about and piled on various surfaces?

5 A Correct. In the cellophane, in boxes, things  
6 of that nature.

7 Q Some items were in boxes and other items were  
8 not in boxes?

9 A That's right.

10 Q Were all these items apparently new?

11 A They looked new to me.

12 Q When you went downstairs and saw that these  
13 items were there, you placed a phone call, is that correct?

14 A That is correct.

15 Q You called your superiors, is that correct?

16 A Ye-.

17 Q You asked for reinforcements?

18 A That's right.

19 Q They were available, right?

20 A Everybody was home in bed. They were available.

21 Q They were available?

22 A Yes.

23 Q They came, is that correct?

24 A That' correct.

25 Q They began arriving at about what time?



Westhoff - cross

A Probably an hour after I made the call.

Q It's your testimony they all came from home in bed?

THE COURT: Come on.

MR. WOODFIELD: I object.

THE COURT: Please, I have been patient here. I have other hearings after this, believe me. I think you've roamed, duplicated, and let's get down to what the issue is here. Now, come on.

Q Do you know whether any other agents were on duty at FBI headquarters to respond to your call for reinforcements?

THE COURT: What difference does it make? This man served the warrant, not the other agents that came out of bed in the middle of the night.

MR. EPSTEIN: If I can approach I can tell you the reason for the question.

THE COURT: I can't possibly conceive of any relevance to such an inquiry --

MR. EPSTEIN: If I may be heard briefly. I don't mean to try your Honor's patience. One of the issues in this matter that Mr. Woodfield raises is that these agents acted in good faith. They waited long enough and when Mr. Gallacher came home they were afraid that labels would be destroyed. They didn't have

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2 to serve it at 11:30 There could have been a stake-out  
3 of the home and it could have been Thursday the fol-  
4 lowing morning. That's all I intend to bring out.

5 THE COURT: Whether they were available or not,  
6 not called in the middle in the night to come down  
7 would have no knowledge when the warrant was served.  
8 They can't contribute anything to that --

9 MR. EPSTEIN: I agree. If they were available.  
10 That is the point I want to bring out.

11 THE COURT: The FBI, I take judicial notice,  
12 has about one thousand agents assigned to New York and  
13 has plenty of men available when emergencies arise or  
14 what they think to be emergencies.

15 MR. EPSTEIN: Thank you, your Honor. May I  
16 just have one moment?

17 (Pause.)

18 MR. EPSTEIN: I have no further questions.

19 MR. WOODFIELD: I have three questions.

20 REDIRECT EXAMINATION BY

21 MR. WOODFIELD:

22 Q Agent, can you estimate the approximate time  
23 that you and your fellow agents or police officers took to  
24 perform the cursory inspection upstairs?

25 A (No response.)



13 1 on the warrant, I have to assume there was probable  
2 cause to issue the warrant in the first place. As I  
3 understand it, your attack is really one that the war-  
4 rant was served too late, and two that it was not  
5 served at the proper location. And it's those questions  
6 that I will deal with.

7 I am going to uphold this warrant for the fol-  
8 lowing reasons: I am satisfied from what was said in  
9 the United States against Burke case, 517 F 2nd, 387,  
10 that a District Court should be wary in extending the  
11 exclusionary rule in search and seizure cases to viola-  
12 tions which are not of constitutional magnitude. In  
13 my opinion, the failure, or I should say the inability  
14 of the agent to serve this warrant before 10 p.m. is  
15 satisfactorily excused by the circumstances which have  
16 been made apparently through the hearing here this  
17 afternoon. This was certainly not a case one would  
18 apply the two standards of the Burke case, where I can  
19 find any prejudice in the sense that the search might  
20 not have occurred or would not have been so abrasive  
21 if the rule of service before 10 p.m. had been followed;  
22 or two, there was any evidence of an intentional dis-  
23 regard of the provisions vis a vis provisions in the rule.

24 In my opinion, based on the information available  
25 here of agents waiting outside from at least the time

1 the warrant arrived sometime in the afternoon, 3 o'clock  
2 until 10 p.m., it's true they could have pulled up their  
3 tents and gone home or had somebody wait one more hour  
4 outside the house waiting for someone who resided in  
5 the apartment to arrive. It was stipulated he was the  
6 sole occupant at the time. We cannot regard this  
7 intrusion made within five to fifteen minutes after he  
8 entered the house as an abrasive invasion of people  
9 asleep in bed in the middle of the night.

10 So I can't find, as I say, that this would not  
11 have been an abrasive search. I cannot find that it  
12 would have been an abrasive search under the circum-  
13 stances or what I will regard as a repulsive intrusion  
14 of privacy in the middle of the night.

15 On the basis of the evidence here, although as  
16 a matter of defense you may be able to convince a jury  
17 at a trial that this was some separate apartment rented  
18 by someone else, in the light of the information pro-  
19 vided by a co-defendant, Sallone, as to whom he was  
20 bringing the goods that he was caught with, the identity  
21 of that person, and what his past relationship with  
22 that person was, that is the defendant Gallagher, I  
23 don't think in my opinion anyone can claim there was  
24 any mistaken identity as to whose room that was under  
25 the very apartment in which Gallagher lived. In view



15<sup>1</sup>  
2 of the fact it was Mr. Gallagher, and to corroborate  
3 the fact he had provided the telephone number of the  
4 phone that didn't have a number on it, and secondly, a  
5 slip of paper bearing Mrs. Gallagher's name -- a receipt  
6 of some kind -- was in one of the coats in the so-called  
7 bathroom, which I regard is inditia of his connection  
8 with that area -- and under the circumstances I'm going  
9 to find the warrant to have been validly executed in  
10 all respects.

11 MR. EPSTEIN: I don't know if there is any point  
12 of me being heard.

13 THE COURT: I was patient in letting you conduct  
14 a thorough cross-examination. I have read your brief  
15 and the Government's brief. I read the Burke case very  
16 carefully. I am satisfied no invasion of constitutional  
17 rights occurred here that I should feel would warrant  
18 my overturning the search and in effect penalizing the  
19 Government because they stood out there eight hours and  
20 didn't break in the house before 10 p.m.

21 MR. WOODFIELD: Your Honor, I don't believe we  
22 have set a trial date. Can we attempt to set a date on  
23 this?

24 THE COURT: We can.

25 MR. WOODFIELD: I am aware of your Honor's schedule, and that's why I want to get a fall date.

1 defendant was the owner of the premises 1576 East 98th  
2 Street, Brooklyn. And then what? That he lived in one  
3 of the apartments of it?

4 MR. WOODFIELD: I won't make any concession as  
5 to that. The deed indicates he owns that building.  
6 What is there is up to him to prove. I don't really  
7 know, your Honor.

8 THE COURT: You have an agent available?

9 MR. WOODFIELD: I do.

10 MR. EPSTEIN: While in the process of  
11 stipulating this and that, Judge, can I get a  
12 stipulation from Mr. Woodfield that the agents who  
13 executed the search warrant had chronological time  
14 pieces that were in good working order and were set to  
15 Eastern Standard Time and they were not mistaken about  
16 the time they executed it but had their --

17 THE COURT: What you are really asking for is  
18 that they entered the house at 11:30?

19 MR. EPSTEIN: Exactly.

20 MR. WOODFIELD: Or thereabouts. All the times  
21 we are discussing are approximate. I believe we agreed  
22 to that.

23 THE COURT: That is agreed to. The Government  
24 agrees agents were aware they entered the premises at  
25 approximately 11:30 p.m..



JUDGE/MAGISTRATE  
Assigned Trial  
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District Office  
Disp./Sentence

U.S. vs. **76 CR 207**  
**WILLIAM RICHARD CHILDS**

CHARGES  
U.S. CODE SECTION  
**18-659**

OFFENSES  
**Theft of goods in i.c.c.**

U.S. Attorney or Asst.

Defense: ☐ CJA, ☐ Ret., ☐ Waived, ☐ Self, ☐ None, ☐ Other, ☐ PD, ☐ CD

ATTORNEYS

**Gary Woodfield**

KEY  
INTERVALS  
& DATES

ARREST <b>2-2-76</b> U.S. Custody Began on Above Charges	INDICTMENT <input checked="" type="checkbox"/> Information <input type="checkbox"/> <b>3-18-76</b> High Risk Defn. & Design'd <input type="checkbox"/> Waived <input type="checkbox"/> Superseding Indictment <input type="checkbox"/>	PARRAIGNMENT <b>3/24/76</b> 1st Plea <b>10-1-76</b>	TRIAL Trial Set For <input checked="" type="checkbox"/> Not Guilty <input type="checkbox"/> Nolo <input type="checkbox"/> Not Guilty <input checked="" type="checkbox"/> Guilty Voor Dire <input type="checkbox"/> Trial Began <input type="checkbox"/> Trial Ended <input type="checkbox"/>	Deposition <input type="checkbox"/> Continued <input type="checkbox"/> Acquitted <input type="checkbox"/> Dismissed <input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty <input type="checkbox"/>
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Search Warrant	Issued	DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME
	Return			PRELIMINARY EXAMINATION OR REMOVAL HEARING	Date Scheduled <b>2-23-76</b>	<input type="checkbox"/> Dismissed <input type="checkbox"/> Held for District CJ <input type="checkbox"/> Held to Answer to U. S. District C
Summons	Issued			<input checked="" type="checkbox"/> Waived <input type="checkbox"/> Not Waived	Date Held	AT: <b>EDNY</b>
	Served			<input type="checkbox"/> Intervening Indictment		
Arrest Warrant				Tape No.	INITIAL/No.	Magistrate's Initials
COMPLAINT	<b>2-2-76</b>	<b>MS/070B</b>				
OFFENSE (In Complaint)	<b>Pos' sion of stolen goods stolen from interstate commerce. T-18 USC Section 659. (76 II 103 related)</b>					

Show last names and suffix numbers of other defendants on same indictment/information

DATE	PROCEEDINGS
<b>2-2-76</b>	<b>AUSA-Woodfield, D.C. Theodore Rosenberg, Esq. (Ret) 31 Smith St., B'klyn, NY</b> <b>Bail* - \$10,000 Surety or Real Estate Bond to be posted on or before Feb. 4, 1976 at 5:00 PM.</b>
<b>2-4-76</b>	<b>Defendant appeared together with his wife &amp; counsel -Mr. Rosenberg</b> <b>New bond in the sum of \$10,000 PRB secured by lien on premises 1576 East 98th St. B'klyn, NY executed by deft &amp; wife -</b> <b>Memo sent to AUSA Woodfield attaching copy of deed &amp; bond -</b> <b>for the filing of a lien - See copy of memo attached.</b>
<b>3-8-76</b>	<b>As per AUSA Woodfield, D.C. Rosenberg waived hearing telephonically to him on Feb. 23, 1976 - No letter was requested</b>
<b>3-18-76</b>	<b>Before MISHLER, CH J - Indictment filed</b>
<b>3-26-76</b>	<b>Before CATOGGIO, Mag case called-case adj. to April 30, 1976 at 10:00 AM before Judge Neaher for all motions and fixing of trial date. Bail cond. Deft pleaded not guilty.</b>
<b>3-31-76</b>	<b>Notice of readiness for trial filed</b>
<b>4/22/76</b>	<b>Notice of motion to suppress, etc. filed</b>
<b>4/30/76</b>	<b>Before NEAHER, J.- Case called- deft and counsel present case adjd to 6/10/76 at 10:00 A.M. for hearing- bail contd</b>

OPPOSITE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC §3161(h) - "SPEEDY TRIAL ACT".



IV. PROCEEDINGS (continued)

5-24-76	Notice of motion for suppressing evidence & Memorandum of Law filed (ret. June 10, 1976)			
6/8/76	Affidavit of Terry Bohnefelder filed			
6/8/76	Govt's memorandum of law in opposition to motion to suppress			
6/10/76	Before NEAHER, J. - Case called- deft and counsel present- hearing on motion to suppress begun case adjd to 7/6/76 at 10:00 A.M.			
7-6-76	Before NEAHER, J. - Case called. Deft not present. Counsel present. Case adj'd to 7-26-76 at 10 A.M for trial.			
7/26/76	Before NEAHER, J. - Case called. Deft & Counsel B. Epstein present. Case adjd to 8/30/76 at 10:00 a.m. for status report. Deft waives speedy trial rights. Case adjd to 10/5/76 at 10:00 a.m. for trial.			
9/23/76	Before NEAHER, J. - Case called. Deft present. On consent of Counsel - case adjd to 10/1/76 at 10:00 a.m. for Status Report.			
10-1-76	Before NEAHER, J. - Case called-Deft and counsel present. Deft being advised of his rights and on his own behalf with counsel pleads not guilty and enters plea of guilty to ct 3. Court finds no basis for plea-Bail cont'd-Case adjd w/o date for sentencing.			
12-3-76	Before Neaheer, J. - Case Called. Deft. & Counsel present. Deft. sentence on his plea of GUILTY to count three to two years imprisonment pursuant to Section 3651. Deft. to serve six months balance of eighteen months suspended. Deft. place on Probation for three years and further sentence to pay a \$1,000.00 fine. Motion of AUSA Woodfield, counts one and two - dismissed. Execution of sentence stayed pending appeal from denial of suppression motion. Bail continued pending appeal.			
12-3-76	Judgment and Commitment filed. Certified Copies to Marshal and Probation.			
12-10-76	Notice of appeal filed - docket entries and duplicate of notice of appeal mailed to the court of appeals			
12/20/76	Record on appeal certified and mailed to the C of A.			

(a)	(b)	(c)	(d)
Interval (per Section II)	Start Date End Date	Ltr Code	Total Days



RECEIVED  
U. S. ATTORNEY  
JAN 26 2 55 PM '77  
EAST. DIST. N. Y.

*Paul  
J. J. J.*